

EXHIBIT H



NATURAL RESOURCES DEFENSE COUNCIL

April 24, 2007

By Facsimile and Overnight Delivery

Margaret P. Grafield
Director, Office of Information Resources Management
Programs and Services, SA-2, 5th Floor
United States Department of State
Fax: (202) 261-8579

Re: Request for information regarding logging and/or trade of bigleaf mahogany from Peru under CITES Appendix II

Dear Ms. Grafield:

On behalf of the Natural Resources Defense Council (“NRDC”), I write to request the disclosure of records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), and the pertinent U.S. Department of State (“DOS”) regulations, 22 C.F.R. Part 171 Subparts A thru H.

The term “records” is used throughout this letter to mean anything denoted by the use of that word, or its singular form, in the context of FOIA.¹ The term includes, but is not limited to, anything meeting the definition of “record” at 22 C.F.R. § 171.10(b).

This new request follows on our July 11, 2006 letter (case number 200603432). Despite numerous communications with the DOS FOIA office in more than nine months since that request was submitted, we have yet to receive any of the documents referenced in that request. In particular, we have not received the cable, communication or other record sent on or around April 19, 2006² from the United States Embassy in Peru relating to the logging and/or trade of bigleaf mahogany (*Swietenia macrophylla*) from Peru.

In addition to the records requested in the July 11, 2006 letter, we are now requesting any other records prepared, authorized, stored or received after the date of that

¹ Included in the term “records” shall be all writings (handwritten, typed, electronic or otherwise produced, reproduced or stored) in the possession of the Department of State, including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, calendar or daily entries, visitor logs, telephone logs, meeting agendas, notices and telefaxes. The request includes, but is not limited to records prepared or created by State Department personnel, including without limitation, personnel or consultants working in or for the U.S. Embassy in Peru or for the State Department in Washington, D.C., as well as submissions from corporations, foreign governments, international organizations, and non-governmental entities.

² We now understand, from conversations with staff at the DOS FOIA hotline, that an April 21, 2006 cable exists that is responsive to NRDC’s July 11, 2006 FOIA request.

request relating to the logging and/or trade of bigleaf mahogany (*Swietenia macrophylla*) from Peru.

Please produce these records on a rolling basis, with highest priority given to the most recent records; at no point, however, should the Department's search for—or deliberations concerning—certain records pertaining to this request delay the production of others that the Department has already retrieved.

I appreciate your help in obtaining this information. Additional elements of this request are included in an Appendix to this letter.

Please send the requested records to S. Jacob Scherr, Senior Attorney, Natural Resources Defense Council, 1200 New York Ave., NW, Suite 400, Washington, DC, 20005. If you need further information please feel free to contact me by phone at (202) 289-2367 in order to speed consideration of this matter.

Sincerely,



S. Jacob Scherr
Senior Attorney
Director, International Program

**NRDC FOIA Request to the Department of State
Appendix: Supplemental and Supportive Materials**

FOIA EXEMPTION

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for us to appeal the denial. Specifically, this information must include, *inter alia*:

- 1) Basic, factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item;
- 2) Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

REQUEST FOR A FEE WAIVER

NRDC requests a fee waiver for these records. FOIA requires that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a) (4)(A)(iii). Disclosure of the records requested here would meet these two requirements and therefore is entitled to a fee waiver as set forth in regulations 22 C.F.R. § 171.15(a). We incorporate by reference the supporting documentation in our July 11, 2006 request, as well as our August 9, 2006 appeal of the DOS’s denial of our request for a fee waiver.

A. First Requirement

Disclosure of the records requested above would be “likely to contribute significantly to public understanding of the operations and activities of the government.” *Id.* The records in question pertain to U.S. foreign policy, specifically the role of the State Department in policies regarding international natural resource use, trade in endangered species, and activities that could affect globally significant ecosystems and vulnerable indigenous peoples. In particular, trade and logging of bigleaf mahogany is an area of concern identified by former Secretary of State Colin Powell as part of the President’s Initiative Against Illegal Logging.³ Extraction of bigleaf mahogany in Peru impacts ecosystems of importance both regionally and at an international level. Bigleaf mahogany is covered under the Convention of International Trade in Endangered Species

³ Remarks on the Launch of President Bush’s Initiative Against Illegal Logging. July 28, 2003. See <http://www.state.gov/secretary/former/powell/remarks/2003/22845.htm>.

of Wild Fauna and Flora (“CITES”) to which the United States is a party. The environmental and social impacts of mahogany extraction in the rainforests of Peru is a matter of general public concern. *See, e.g.*, Attachment 1.⁴ Examination of the requested records would contribute to public understanding of U.S. Department of State activities in developing policies on illegal logging, trade in endangered species, natural resource extraction, and the potential impacts of these activities on globally significant ecosystems and vulnerable indigenous peoples.

As an environmental organization that has spent over thirty years promoting the public interest through the development of wise federal environmental policies, NRDC routinely receives fee waivers under FOIA. This is in large part because the organization has repeatedly proven its ability to disseminate the information it obtains through FOIA to large segments of the public. If the information we seek proves to be of sufficient value, newsworthiness or otherwise of public interest to warrant public dissemination, we could foresee disseminating relevant portions of the information more broadly through the public communication methods at our disposal. These methods include:

- NRDC’s Web site (<http://www.nrdc.org> and, more specifically, <http://www.savebiogems.org/tahuamanu>), which receives approximately 2.5 million page views and approximately 700,000 visits each month;
- email alerts, which NRDC sends to approximately 550,000 individuals several times each month (a selection of current alerts is available at <http://www.nrdcaction.org/action/default.asp>);
- Earth Action email alerts, which NRDC sends to approximately 165,000 subscribers twice each month;
- NRDC’s Nature’s Voice publication, which NRDC mails five times each year to approximately 600,000 NRDC members;
- NRDC’s OnEarth magazine, which NRDC mails four times each year to approximately 150,000 subscribers, distributes for sale at newsstands and bookstores, and additionally posts on its Web site for downloading free-of-charge (<http://www.nrdc.org/onearth/05fa1/defalt.asp>);
- newspaper, magazine, and trade-press articles, and radio and television news reports, in which NRDC staff members are quoted – and in which information obtained from NRDC is conveyed – several times each week;

See, e.g., Attachments 2, 3, and 4 for a few of the many examples of NRDC’s successful use of the channels listed above to disseminate widely its summaries and explanations of federal government records that NRDC has obtained through FOIA.

⁴ Attachments 1-4 refer to attachments to our July 11, 2006 request.

B. Second Requirement

Disclosure of the records requested here would also satisfy the second fee waiver requirement because NRDC does not have “a commercial interest that would be furthered by the requested disclosure.” 22 C.F.R. § 171.15(a) (2). NRDC is a not-for-profit organization and, as such, has no commercial interest. Moreover, NRDC does not intend to sell any information contained in the records it receives pursuant to this request. Rather, it plans to disseminate the information at the organization’s expense.

Because disclosure of the records described above would meet the requirements set forth in 5 U.S.C. § 552(a)(4)(A)(iii), and 22 C.F.R. § 171.15(a), NRDC respectfully requests that the U.S. Department of State waive search and production fees.

Please provide the requested records irrespective of the status and outcome of your evaluation of NRDC's fee-waiver request. To prevent delay in the provision of the requested records, NRDC hereby states that it will, if necessary and under protest, pay fees in accordance with 22 C.F.R. § 171 Subparts A & B. Please consult with me, however, before undertaking any action that would cause the fee to exceed two hundred and fifty dollars. No payment made under protest will constitute any waiver of NRDC's right to seek administrative or judicial review of any denial of its fee-waiver request. NRDC reserves the right to appeal any refusal to waive such fees as provided under 22 C.F.R. § 171.15(c).

TIMELY RESPONSE

Please produce the records described above on a rolling basis; at no point should the Department's search for—or deliberations concerning—any records requested here delay the production of others that the agency has already retrieved and elected to produce. I look forward to your response within twenty days, as required by the FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and DOS regulations at 22 C.F.R. § 171.12(a).

Attachments (also included in NRDC's July 11, 2006 FOIA request):

- Attachment 1** New York Times Article "A Swirl of Foreboding in Mahogany's Grain" by Juan Forero published on September 28, 2003
- Attachment 2** National Geographic News Online article "Rights Groups Urge Peru to Protect Isolated Peoples" by John Roach on March 14, 2003
- Attachment 3** New York Times Article, "Executive Order Followed by Energy Industry Recommendation, Documents Show" by Don Van Natta Jr. on April 4, 2002
- Attachment 4** NRDC email sent to thousands of members regarding illegal and unsustainable logging activities in Tahuamanú Rainforest